

STATE OF SOUTH CAROLINA)	BEFORE THE CHIEF PROCUREMENT
COUNTY OF RICHLAND)	OFFICER FOR CONSTRUCTION
)	
)	
IN THE MATTER OF: CANCELLATION)	
OF AWARD)	
SOUTH CAMPUS HOUSING PHASE III)	WRITTEN DETERMINATION
STATE PROJECT H27-9900-RC)	
UNIVERSITY OF SOUTH CAROLINA)	POSTING DATE: December 19, 2002
)	
)	

This matter is before the Chief Procurement Officer for Construction (CPOC) pursuant to a request from University of South Carolina (USC) under the provisions of §11-35-1520(7) of the South Carolina Consolidated Procurement Code (Code), for a determination of appropriateness regarding USC's intent to cancel a contract for construction with Contract Construction for the South Campus Housing Phase III project (the Project).

BASIS FOR THE REQUEST

USC received five bids for the Project on November 14, 2002, ruled two bids non-responsive for reasons not relevant to this request, and subsequently posted a Notice of Intent to Award to Contract Construction [Exh. 1] on November 19, 2002. On December 4, 2002 the protest period for the Intent to Award expired. While a contract was contemplated, it was never executed and USC did not issue a Notice to Proceed to Contract Construction. On December 19, 2002 USC submitted a request [Exh. 2] to the CPOC to cancel the award, citing revised specifications, unreasonable pricing and a material administrative error in the evaluation of the bids.

ANALYSIS

Regulation 19-445.2085.C provides that the CPOC may cancel an award prior to performance and, in his discretion, order either reaward or resolicitation for any one of several reasons as discussed below.

1. Pursuant to Regulation 19-445.2085.C(7), awards may be canceled for administrative error of the procuring agency discovered prior to performance. There were two material administrative errors. First, USC determined Contract Construction's bid to be both responsive and responsible. An examination of the bid form submitted by Contract Construction shows that it failed to properly complete the subcontractor

listing in the bid form as required by §11-35-3020(2)(b)(ii) of the Code. The statute is unequivocal on this point.

Failure to complete the list provided in the invitation for bids renders the bidder's bid unresponsive.

The bid submitted by Contract Construction was non-responsive on its face and Contract Construction was therefore ineligible for award of the advertised contract for the Project.

USC's second administrative error was the issuance of a bid tabulation which did not accurately reflect the information provided by Contract Construction in its bid form. The effect of this error was to deny the remaining bidders proper notice of the irregularity in CC's bid.

While this second error is potentially correctable through retraction of the Notice of Intent to Award and reaward to the lowest responsive and responsible bidder, USC also stated that its requirements have changed materially.

2. Pursuant to Regulation 19-445.2085.C(2), awards may be canceled because specifications have been revised. To support a decision to order resolicitation, such revisions must be material, not cosmetic. In this case USC intends to eliminate all five Bid Alternates, revise the scope of the Base Bid by approximately 10% (on a cost basis), offer an early completion bonus and provide for an alternative to the State's standard approach to liquidated damages.

The CPOC finds that USC's revisions to the scope of the Project and to the terms of the contract for the construction are of sufficient magnitude so as to materially alter the competitive positions of the bidders, and to warrant resolicitation. The CPOC notes that USC asserted that the prices offered by the remaining bidders was unreasonable, without further amplification or support. Having found that resolicitation is warranted on other grounds, the issue of unreasonable pricing is not addressed further.

DETERMINATION

Under the authority granted by SC Code Regulation 19-445.2085(C), the CPOC hereby cancels, prior to performance and in its entirety, the Notice of Intent to Award to Contract Construction. The University of South Carolina shall proceed to formally notify Contract Construction of the cancellation. USC is further directed revise the specifications in accordance with its request for cancellation and to re-solicit this procurement consistent with its programmatic needs.

IT IS SO ORDERED

A handwritten signature in black ink that reads "Michael M. Thomas". The signature is fluid and cursive, written in a professional style.

Michael M. Thomas
Chief Procurement Officer for Construction

December 19, 2002

Date

STATEMENT OF THE RIGHT TO APPEAL

By canceling the intent to award prior to performance, this Decision also serves as a written determination under Section 11-35-1520(7) and Regulation 19-445.2085(C). The South Carolina Procurement Code, under Section 11-35-4410, subsection (1)(b), states:

(1) Creation. There is hereby created The South Carolina Procurement Review Panel which shall be charged with the responsibility to review and determine *de novo*:

...

(b) requests for review of other written determinations, decisions, policies, and procedures as arise from or concern the procurement of supplies, services, or construction procured in accordance with the provisions of this code and the ensuing regulations; provided that any matter which could have been brought before the chief procurement officers in a timely and appropriate manner under Sections 11-35-4210, 11-35-4220, or 11-35-4230, but was not, shall not be the subject of review under this paragraph. Requests for review under this paragraph shall be submitted to the Procurement Review Panel in writing, setting forth the grounds, within fifteen days of the date of such written determination, decisions, policies, and procedures.

Additional information regarding the administrative review process is available on the internet at the following Web site: <http://www.state.sc.us/mmo/legal/lawmenu.htm>